

**International Brotherhood of Electrical Workers,
Local 6, AFL-CIO and Chronicle Broadcasting
Company, KRON-TV and The San Francisco
Electrical Contractors' Association, Inc., Party
to the Contract. Case 20-CE-178**

August 4, 1981

DECISION AND ORDER

Upon a charge filed by Chronicle Broadcasting, KRON-TV (KRON or Charging Party) on February 25, 1980, and duly served on Respondent International Brotherhood of Electrical Workers, Local 6, AFL-CIO,¹ the General Counsel of the National Labor Relations Board, acting through the Regional Director for Region 20, on March 12, 1980, issued and served on Respondent a complaint and notice of hearing, alleging that Respondent had violated Section 8(e) of the Act. The Respondent filed an answer, and, on June 3, 4, and 5, 1980, Respondent, KRON, S.F.E.C.A., and the General Counsel filed with the Board a motion to transfer the proceedings to the Board and a stipulation of facts. The parties stipulated to the contents of the record, and agreed that no oral testimony was necessary or desired.

They further stipulated that they waived a hearing before an administrative law judge, the makings of findings of fact and conclusions of law by an administrative law judge, and the issuance of an administrative law judge's decision, and desire to submit this case for findings of fact, conclusions of law, and an order directly to the Board. By order dated July 28, 1980, the Board granted the motion, approved the stipulation of facts, and transferred the proceedings to the Board. Thereafter, briefs were filed by the General Counsel, the Charging Party, Respondent, and S.F.E.C.A.

The Board has considered the entire record stipulated to by the parties and the briefs filed by the parties, and hereby makes the following findings and conclusions.

I. THE BUSINESS OF THE EMPLOYERS

S.F.E.C.A., a corporation, represents its employer members (who are engaged in the electrical contracting business in the building and construction industry) in labor relations matters, including negotiating, entering into, and administering a collective-bargaining contract with Respondent.

¹ The Charging Party filed its original charge on February 25, 1980, and an amended charge on February 27, 1980. Both charges were against Respondent, The San Francisco Electrical Contractors' Association, Inc. (S.F.E.C.A.), and Weber Electric Company (Weber Electric). The underlying complaint only issued against Respondent because S.F.E.C.A. and Weber Electric entered into a settlement agreement with KRON which was approved by the Regional Director for Region 20 on April 9, 1980.

Weber Electric has been an employer member of S.F.E.C.A., and a corporation, with an office and place of business in San Francisco, California, and has been engaged as an electrical contractor in the building and construction industry.

During the calendar year 1979, Weber Electric, in the course and conduct of its operations, provided services valued in excess of \$150,000 within the State of California for Herrero Brothers, Inc., pursuant to a subcontract agreement between the parties.

Herrero Brothers, Inc., a corporation, with an office and place of business in San Francisco, California, has been engaged as a general contractor in the building and construction industry. During the calendar year 1979, Herrero Brothers, Inc., in the course and conduct of its operations, purchased and received at its San Francisco, California, facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of California.

The parties therefore stipulated, and we find that Herrero Brothers, Inc., Weber Electric, and S.F.E.C.A. have been employers engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) and Section 8(e) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated and we find that Respondent Union is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Stipulated Facts

On February 4, 1980,² KRON, because of a contract dispute, was struck by three unions: because of a contract dispute: America Federation of Television and Radio Artists, International Brotherhood of Electrical Workers Local 202, and Office and Professional Employees Local 3. At the time the strike commenced, KRON-TV had engaged Herrero Brothers, Inc., a general contractor, to perform some remodeling work at the KRON-TV premises. Weber Electric was the electrical subcontractor in the job. KRON established a reserved gate for all neutral employees. There were no pickets at the reserved gate. From on or about February 14 until March 21, however, during the pendency of the KRON-TV strike, electrician employees of Weber Electric did not report for work.

² All dates herein refer to 1980 unless otherwise noted.

The parties stipulated that neither IBEW Local 6, nor any of its officers, agents, or representatives, have induced, encouraged, or in any way promoted a work stoppage by Weber's electrician employees. On two occasions, on February 23 and 28, Bartlett Dickson, the executive manager of S.F.E.C.A., informed officials of KRON-TV that Weber Electric could not perform the electrical work at the KRON project because of two clauses in the S.F.E.C.A.—IBEW Local 6 collective-bargaining agreement. The specific clauses referred to by Dickson were article I, section 4, and article III, section 10. Article I, section 4, reads:

During the term of this Agreement, there shall be no stoppage of work either by strike or lockout because of any proposed changes in this Agreement or dispute over matters relating to this agreement. All such matters must be handled as stated herein.

However, no part of this Agreement is to be interpreted as requiring members of the Union to work behind a recognized picket line or where strike, lockout or other conditions detrimental to the interest of the Local Union prevail.

Article II, section 10(c), reads:

The policy of the UNION and the workmen it represents is to promote the use of materials and equipment manufactured, processed, or repaired under economically sound wages, hourly and working conditions by their fellow members of the International Brotherhood of Electrical Workers. No workmen shall be discriminated against for his individual decision not to work on any materials or equipment which he believes are not so manufactured or processed, or to work on any job he believes is not in the best interests of himself or the International Brotherhood of Electrical Workers or the electrical construction industry.

B. The Issues and Contentions

The General Counsel alleges that the above-quoted provisions manifest on their face unlawful secondary objects in violation of Section 8(e). In addition, the General Counsel claims that the allegedly unlawful provisions were reaffirmed within the 10(b) period when S.F.E.C.A. Executive Manager Dickson informed KRON that the employees of its member employer, Weber Electric, were privileged to withhold their services pursuant to the contract clauses set out above. The Charging Party and S.F.E.C.A. agree with the General Counsel.

Respondent argues that the record is void of any evidence that Respondent has, during the relevant time period, interpreted the contract clause in any way which would prevent or compel Weber Electric to cease doing business with anyone. Nor, according to Respondent, is there any evidence that Respondent in any way induced or encouraged Weber Electric's employees to engage in a work stoppage. Accordingly, it contends that the complaint should be dismissed in its entirety.

C. Discussion and Conclusions

We conclude that the General Counsel has failed to establish that Respondent, through its conduct, "entered into" the contract within 6 months of the filing of the original charge as required by Section 10(b) of the Act. Accordingly, we shall dismiss the complaint in its entirety.

Section 8(e) provides that it shall be an unfair labor practice "to enter into" any contract or agreement having characteristics proscribed by that section. In previous decisions we have held that Congress intended the words "to enter into" to "encompass the concepts of reaffirmation, maintenance, or giving effect to any agreement which is within the scope of Section 8(e). (Footnote omitted.)" *Dan McKinney Co.*, 137 NLRB 649, 654 (1962), and cases cited therein. This conduct must occur within 6 months of the filing of the unfair labor practice charge or the charge is barred by Section 10(b) of the Act.

In the usual case both the employer and the union have taken some action during the 10(b) period to reaffirm their collective-bargaining agreement. And, in those instances, both parties are normally, but not necessarily, also respondents in the Board proceeding. In *Dan McKinney*, however, the Board decided the issue of whether the "entering into" requirement was satisfied where only one party, the respondent employer, had taken action to implement the contract during the period covered by the charge. (137 NLRB at 654.) The Board reviewed the Congressional legislative history of Section 8(e) and concluded that "an employer's independent enforcement of a hot-cargo clause was intended to be a violation of Section 8(e)." (137 NLRB at 656.) In *Dan McKinney* the employer was also the sole respondent.

In the instant case, the Respondent Union has taken no action to enforce the contract during the 10(b) period. The employer association, S.F.E.C.A., however, through its executive manager, informed KRON that Weber Electric's employees were privileged to withhold their services pursuant to the collective-bargaining agreement then in effect between Respondent Union and the

association.³ General Counsel urges that S.F.E.C.A.'s conduct satisfies the "entering into" requirement such that we may consider the substantive issue of whether the contract clauses here are legal.

We do not agree with the General Counsel that S.F.E.C.A.'s action satisfies the "entering into" requirement, where, as here, S.F.E.C.A. is not a respondent, and the only Respondent, the Union, has taken no action to enforce or reaffirm the contract within the 10(b) period. In *Truck Drivers Local No. 696, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Freeto Construction Co., Inc.)*, 149 NLRB 23 (1964), the Board found that "there was not sufficient activity by the Respondent [union] with respect to the contract to constitute . . . an 'entering into' it within 6 months prior to the filing of the charge herein." (149 NLRB at 28.) In *Freeto Construction*, the employer decided without consultation with, or pressure from, the union that he would not send his drivers to construction sites which were being picketed by other unions. He informed the union steward of this decision, and the steward made no protest.⁴ The Administrative Law Judge found, and the Board adopted his findings, that respondent's failure to protest was not suffi-

cient activity to constitute an "entering into" within the 6-month period.

In the instant case, Weber Electric's employees withheld their services for approximately 5 weeks, despite the presence of a reserved gate. Weber's employees are members of Respondent. Although the employees' work stoppage was concerted, in that the employees stopped work together and returned to work together, the parties stipulated that "[t]here is no evidence that Respondent induced or encouraged its member employees of Weber Electric to engage in a stoppage of work . . . other than its entering into the [collective-bargaining] agreement" Moreover, Respondent never "expressly avowed or disavowed its intent to maintain, enforce or give effect to the contract provisions" within the 6-month period. Accordingly, it appears that the facts in this case are not materially different from those in *Freeto Construction, supra*, and that Respondent did not enter into the contract within 6 months of the filing of the unfair labor practice charge. We, therefore, as in *Freeto Construction*, shall dismiss the complaint herein, in its entirety.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

³ S.F.E.C.A. and Weber Electric are not respondents as they were parties to a settlement of the complaint.

⁴ No employee refused to cross a picket line, nor were any asked to do so.